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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,577	09/30/2003	August Joseph Borschke	11867/23	9964
757 7590 04/27/2007 BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610			EXAMINER CORDRAY, DENNIS R	
			ART UNIT	PAPER NUMBER
			1731	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/27/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/675,577

Applicant(s)

BORSCHKE ET AL.

Examiner

Dennis Cordray

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's cancellation of Claims 50-91, filed 2/15/2007, has removed the basis for the provisional obviousness-type double patenting rejection. Therefore the rejection has been withdrawn. All other rejections of Claims 50-91 have also been withdrawn.

Applicants arguments with respect to Brackmann et al, see p 11, have been fully considered and are persuasive. Brackmann et al is not used in the current rejections.

New grounds of rejection are presented to address the amendments to Claims 1 and 27 and to clarify the Examiner's position.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 27, 29-30, 32-34, 38-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jakob et al (5101839) in view of Schneider et al (5265626).

Jakob et al discloses a cigarette comprising a smokable filler material (inner core portion) that includes tobacco, glycerin as an aerosol forming material and an alginate or guar gum as a binding material. The tobacco can include tobacco cut filler, tobacco laminae or processed tobacco. The smokable material can be cased or top dressed. The amount of aerosol forming material is typically at least 20% and can be up to about 70% by weight of the smokable material. Thus, the tobacco and aerosol forming

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material can comprise greater than 60% of the smokable material. The smokable filler material is wrapped in a paper to make the cigarette (Abs; col 2, lines 52-59; col 6, lines 48-50 and 63-64; col 12, lines 16-18; Figs 3-4). Sodium citrate (an exogenous alkali metal salt of a carboxylic acid) can be included as a sequestering agent (col 11, lines 14-16). Once incorporated, the sodium citrate can also serve as a burn suppressing agent.

The smokable filler material is provided by forming and drying a sheet from an aqueous slurry of all components, then cutting or shredding the sheet (col 11, lines 4-24). Forming the sheet from a slurry ensures that the ingredients of the smokable material are in intimate contact with each other. The fibrous tobacco thus also becomes a substrate for other additives, such as the aerosol forming material. Inorganic fillers, flavoring agents and other substances can be included but are not required, thus the smokable filler material can substantially comprise (greater than 90 percent) tobacco, aerosol forming material, binder and sodium citrate (cols 7-12). The cigarette has a cylindrical shape, a lighting end and a mouth end (end where a filter, or mouthpiece, can be included, but is not required) (Abs; Figs 3-4). In the absence of a filter, the lighting end and the mouth end are open to expose the core and outer portions (Abs; Fig 1). The inner portion of the cigarette (rod) and the outer wrapping have longitudinally extending outer surfaces.

In a preferred embodiment, the smokable filler portion is wrapped, or circumscribed, in a longitudinally extending processed tobacco sheet (outer portion that

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is physically separate from the core filler material), which is in turn wrapped, or circumscribed, in a layer of cigarette paper (col 4, line 62 to col 5, line 8; Figs 3-4).

When smoked, the cigarette burns at an acceptable rate and maintains smolder, thus the outer portion smolders. Burning the cigarette from the lighting end toward the mouth end in use is inherent or, at least, it would have been obvious to one of ordinary skill in the art to burn the cigarette from the lighting end toward the mouth end.

Jakob et al does not disclose that the processed tobacco sheet wrapping contains a burn suppressing agent.

Schneider et al discloses a cigarette having an inner core formed of a rod of tobacco material, a sheath or wrapper for the inner core, an outer shell of tobacco material coaxially surrounding the inner core and a sheath or wrapper for the outer shell (Abs). The inner core comprises additives for controlling combustion (burn suppressing agent). The outer shell and/or outer wrapper comprises additives for controlling thermal processes (burn suppressing agents) in high concentration. While not expressly stated by Schneider et al, the Examiner considers the emphasis on a high concentration of the burn suppressing additives in the outer shell to mean that significantly more burn suppressing additives are present in the outer shell than in the inner core, thus the degree of burn suppression in the outer shell is higher than in the inner core.

The art of Jakob et al, Schneider et al and the instant invention is analogous as pertaining to cigarettes having an inner tobacco rod circumscribed with an annular outer tobacco portion. It would have been obvious to one of ordinary skill in the art to include burn suppressing additives in the tobacco sheet wrapping in an amount that the degree

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of burn suppression in the outer shell is higher than in the inner core in the cigarette of Jakob et al in view of Schneider et al to provide a cigarette that concentrates the heat inside and resists starting a fire if dropped onto or left on a combustible surface.

3. Claims 28, 31 and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jakob et al in view of Schneider et al ('626) and further in view of Muller et al (6257243).

The disclosures of Jakob et al and Schneider et al are used as above.

Jakob et al does not disclose that the inner core portion comprises a wrapping that separates it from the outer tobacco sheet wrapping. Jakob et al also does not disclose an outer wrapping paper with a porosity of greater than 15 CORESTA units or an inner wrapping paper with a porosity of greater than 100 CORESTA units.

Schneider et al discloses a sheath or wrapping around the inner core and teaches that cigarettes so constructed are well known (col 1, lines 41-50).

Muller et al discloses a smoking article comprising a rod of smokable material (longitudinally extending core portion) surrounded by a covering (wrapped), around which is an outer segment (longitudinally extending outer portion) of combustible material also surrounded by a wrapping material (Abs; col 2, lines 26-40). The wrapping material for the inner rod of smokable material is paper having a low to medium air permeability, with a preferred value of 0-60 CORESTA units (col 3, lines 20-22; col 4, lines 28-32). The outer wrapping is a paper of low permeability, with a preferred value of 0-15 CORESTA units (col 4, lines 17-32). The smokable material

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(inner rod) contains tobacco treated with casings, including humectants, of which glycerin is a preferred example (col 2, lines 46-48; col 6, line 3). The combination of the covering on the inner smokable rod, the outer layer and the outer covering serve to minimize sidestream smoke and spotting (col 1, lines 34-62).

The art of Jakob et al, Schneider et al, Muller et al and the instant invention are analogous as pertaining to cigarettes having an inner tobacco rod circumscribed with an annular outer tobacco portion. It would have been obvious to one of ordinary skill in the art to use a wrapping paper around the inner core separating it from the outer tobacco jacket in the cigarette of Jakob et al in view of Schneider et al and further in view of Muller et al to provide a further barrier to minimize sidestream smoke and spotting. Paper wrapping material having a porosity greater than 100 CORESTA units is readily available on the market and one having ordinary skill in the art would have used such a wrapper to wrap the inner smokable rod without departing substantially from the disclosed paper of low to medium air permeability.

Jakob et al teaches an outer cigarette wrapping paper with very low porosity (from 0 to 5 CORESTA units). Muller et al teaches a cigarette outer wrapping paper with higher porosity, but still relatively low, thus a range of porosity overlapping the claimed range is revealed in the prior art. Paper wrapping material having a porosity greater than 15 or 20 CORESTA units is readily available on the market, as admitted by Applicant, and it would have been obvious to one having ordinary skill in the art to use such a wrapper on the smoking article of Jakob et al without departing substantially from the disclosed paper of relatively low porosity.

4. Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jakob et al (5101839) in view of Schneider et al (5265626) and further in view of Muller et al (6257243) and Schneider et al (5379789).

Jakob et al, Schneider et al ('626) and Muller et al are used as above.

Jakob et al, Schneider et al ('626) and Muller et al do not disclose that aerosol forming material is present in the outer tobacco sheet wrapping.

Schneider et al ('789) discloses a cigarette having an inner core formed of a rod of tobacco material, a sheath or wrapper for the inner core, an outer jacket of tobacco material coaxially surrounding the inner core and a sheath or wrapper for the outer shell (Abs). In one embodiment, the outer jacket of tobacco comprises aroma rich tobaccos that are responsible for the generation of aerosols (col 4, lines 19-28). In a second embodiment, the inner core comprises the aroma rich tobaccos and not the outer jacket (col 4, lines 44-47).

The art of Jakob et al, Schneider et al ('626), Muller et al, Schneider et al ('789) and the instant invention is analogous as pertaining to cigarettes having an inner tobacco rod circumscribed with an annular outer tobacco portion. It would have been obvious to one of ordinary skill in the art to include aerosol forming materials in either the inner core or in the outer shell in the cigarette of Jakob et al in view of Schneider et al ('626) and further in view of Muller et al and Schneider et al ('789) as a functionally equivalent option.

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Conclusion

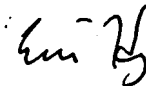
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Cordray whose telephone number is 571-272-8244. The examiner can normally be reached on M - F, 7:30 -4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



DRC



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PRIMARY EXAMINER